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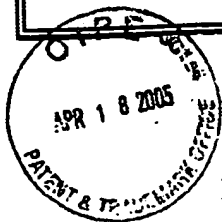
Dated: April 18, 2005

Signature:

*Georgina Matos* (Georgina Matos)

Docket No.: 430672000101  
(PATENT)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:

James F. GAUSLING and Stacey L. MORAN

Application No.: 09/708,766

Technology Center: 3700

Filed: November 7, 2000

Art Unit: 3727

For: ERGONOMIC BOOKPACK

**APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is in response to the rejection of claims 1-26 in a Non-Final Office Action mailed on March 23, 2004 (Paper No. 14). A Notice of Appeal, compliant with then-effective 37 CFR 1.191, was timely filed on December 20, 2002. This Brief is further filed in response to a Notification of Non-Compliant Appeal Brief mailed March 17, 2005.

Under 37 CFR 41.31(a)(1) an applicant may appeal from a decision of the examiner where any of the applicant's claims have been "twice rejected." Under that Rule, this Brief is to be considered an initial Appeal Brief filed under 37 CFR 41.37. However, at the time when prosecution was earlier reopened "after an appeal ...brief has been filed...", 37 CFR 1.193(b)(2)(ii) was then the effective Rule relating to continuation of that appeal. Specifically, in such an instance, to avoid abandonment of the application, the Rule required the appellant specifically to make such a

itself was the source of comparison (and not claim 1), then the rejection is legally improper on its face.

Size more does not cure the specific limitation deficiency of claim 1 of '509.

Withdrawal of the rejection is requested.

### SUMMARY

The rejections recited in the non-Final Office Action are without either legal basis or are without factual support. Reversal of the rejections is completely appropriate and is requested.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no.430672000101. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: April 18, 2005

Respectfully submitted,

By

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